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No. 210

IN THE

Supreme Court of the United States  
(October Term, 1945)

P. G. LAKE, INC.,

*Petitioner*

vs.

COMMISSIONER OF INTERNAL REVENUE,

*Respondent*

**PETITION FOR REHEARING**

HARRY C. WEEKS  
909-913 Sinclair Building  
Fort Worth, Texas  
*Attorney for Petitioner.*

Of Counsel:  
Weeks, Bird & Cannon  
Fort Worth, Texas

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**PETITION FOR REHEARING**

P. G. Lake, Inc., prays that this Honorable Court rehear and reconsider its order of October 8, 1945, denying the petition for writ of certiorari filed in this cause to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above styled cause on April 17, 1945, and reported in 148 F. 2d 898, affirming decision of the Tax Court of the United States, reported in 4 T. C. 1. As grounds for this petition for rehearing, your petitioner states:

1. Fairness and good conscience require that your petitioner's prayer for rehearing be granted. It is morally wrong for the Government to mulct its citizens in such manner as was done here. The administrative agency of the Government charged with the duty of administering the Revenue Laws has perverted a law aimed at tax evaders into an instrument of harassment of innocent taxpayers. No tax evasion was attempted, thought of, practiced, or accomplished by your petitioner or its stockholder, P. G. Lake. Each has paid his full share of taxes due the Government from this transaction. Nonetheless, your petitioner has been penalized by application of a law which was never intended by Congress to apply to it, or to taxpayers similarly situated. The Sixth Circuit Court of Appeals recognized this injustice and remedied it by its decision in *Musselman Hub-Brake Company v. Commissioner of Internal Revenue*, 139 F. 2d 65, which directly conflicts with the holding below. Your petitioner is entitled to equal consideration and relief. Unless this Honorable Court grants this petition, your petitioner will have irretrievably lost a substantial sum of money through the inequitable and harsh application of a law never intended to apply to it. Thus, the Treasury is engaging in the very acts which Congress, at the instance of the Treasury, condemned taxpayers for practicing when the Section was enacted; it is using a strained, artificial construction to collect taxes which Congress never intended to be collected; just as some taxpayers had strained the ordinary deduction for interest (Section

23(b), Internal Revenue Code) to secure artificial deductions.

Such official conduct does not prevent, but encourages, similar acts by taxpayers to the serious detriment of an orderly, fair administration of Revenue laws.

2. That even if the word "paid" as used in Section 24(c)(1) of the *Internal Revenue Code* means to liquidate a liability in cash, as held by the Court below, your petitioner complied with said statute to the extent of \$32,226.89, and is entitled to a deduction in said amount for interest paid.

The aforesaid amount of \$32,226.89 is the sum of money withdrawn from petitioner by P. G. Lake, its creditor and sole stockholder, for his own uses and purposes, between January 1, 1940 and March 15, 1940, the statutory two and one-half month period. (R. 16.) Thus, as of March 15, 1940, petitioner owed P. G. Lake \$56,000.00 (R. 41), and Lake owed petitioner \$32,226.89. It is obvious, therefore, that by law there occurred an extinguishment of, or offset to, petitioner's liability to Lake, to the extent of the sum of \$32,226.89. Cf. *Holliman v. Rogers*, 6 Tex. 91. There is no doubt but that Lake could not have enforced the collection of the full amount of \$56,000.00 of interest here in question on March 15, 1940, or at any time thereafter. He would have been required to offset the amount shown by his open account (\$32,226.89) against this indebtedness. Matters of taxation are to be determined by practical considerations.

From a practical point of view, your petitioner actually paid, discharged, and was no longer liable for, as of March 15, 1940, \$32,226.89 of the interest indebtedness in question, and the obligation of petitioner's stockholder, Lake, to report that amount as income received during that period cannot be questioned. This satisfies the statute, under any possible construction. Petitioner is, therefore, entitled to a deduction from its gross income of interest paid to the extent of \$32,226.89.

WHEREFORE, petitioner respectfully prays that the petition be granted.

HARRY C. WEEKS  
909-913 Sinclair Building  
Fort Worth, Texas  
*Attorney for Petitioner.*

Of Counsel:  
Weeks, Bird & Cannon  
Fort Worth, Texas

I, Harry C. Weeks, Attorney for Petitioner, hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

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Harry C. Weeks.

